

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 202 OF 2005

Shri Krishna Soares,
Santan Curca, Tiswadi,
Goa.

... Applicant

versus

Master Bharat Krishna
Soares and others.

... Respondents

Mr. P. V. Vengurlekar, Advocate for the Applicant.

Mr. A. P. Cardozo, Advocate for the Respondents.

CORAM : N. A. BRITTO, J.

DATE : 14TH NOVEMBER, 2005.

P.C.:-

Heard Mr. P. V. Vengurlekar, the learned Counsel appearing on behalf of the applicant and Mr. A. P. Cardozo, the learned Counsel appearing on behalf of the respondents.

Mr. A. P. Cardozo, the learned Counsel has waived notice and has undertaken to file Vakalatnama on behalf of the respondents.

The applicant is the father of his three children, namely, the respondents, who has invoked the extraordinary jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973(Code, for short) to challenge the Order dated 27-1-2005 passed at interim stage by the learned Chief Judicial Magistrate, Panaji, ordering the applicant to pay interim maintenance at the rate of Rs.500/- each to the said three children/respondents.

There is no dispute that the applicant was married to Radhi alias Radha Soares who expired on 22-12-1997. There is no dispute that after the death of the applicant's wife, the said Radhi alias Radha Soares, the applicant sent his three children/respondents to the house of the applicant's sister by name Smt.Vilasini Soares alias Laxmi Shirvoikar to be looked after by her. The applicant got re-married on or about 30-6-1999 and after that brought back the children to stay in his own house

in the company of his newly wedded wife. The allegation of the said three children/respondents was that there was ill treatment and harassment meted out to them by the applicant as well as by his second wife and that in or about August, 2001, the applicant sent them to his said sister Smt.Vilasini Soares alias Laxmi Shirvoikar to be looked after by her and since then the said children/respondents are residing with the said sister Smt. Vilasini Soares alias Laxmi Shirvoikar who has undertaken the responsibility to look after the said three children in addition to five children of her own.

As already stated, the inquiry into the main application filed by the said three children is yet to begin before the learned Chief Judicial Magistrate, Panaji. The application under Section 125 of the said Code was filed on or about January, 2004 and being so, there is no reason as to why the inquiry into the same has not began, much less, completed. Considering the nature of proceedings, it was expected of the learned Chief Judicial Magistrate, Panaji to have completed the said inquiry into the said application of the three children/respondents under Section 125 of the said Code as

expeditiously as possible. The learned Chief Judicial Magistrate, Panaji is hereby directed to dispose of the said application No.1/2004/A as expeditiously as possible and in any event within a period of six months from the receipt of the Order of this Court.

The contention of Mr. Vengurlekar, the learned Counsel appearing on behalf of the applicant is that the applicant has no children through his second wife and that the applicant is prepared to maintain the said children in case they come back and reside along with him and his second wife.

On the other hand, it is the contention of Mr. Cardozo, the learned Counsel appearing on behalf of the respondents that in case the said three children/respondents were treated well by the applicant or his second wife there was no need for the sister of the applicant to carry the burden of looking after the three children of the applicant in addition to her own five children and that the said sister is compelled to look after them only because the applicant as well as his second wife are not treating them well.

As already stated, the inquiry into the main application is yet to begin. Prima facie on the allegations made by the said three children/respondents and which are supported by the affidavit of the said sister of the applicant, the learned Chief Judicial Magistrate, Panaji has come to the conclusion that the offer of the applicant that he will maintain the said three children is malafide. It also appears that the allegations of ill treatment were also supported by complaints filed by Smt. Vilasini Soares alias Laxmi Shirvoikar on 11-8-2001, and 5-9-2001.

In the light of the prima facie evidence produced before the learned Chief Judicial Magistrate, Panaji, the conclusion arrived at by him that the said three children/respondents were residing with the said sister of the applicant on account of the ill treatment meted out to them could not be faulted and, therefore, the offer of the applicant that he was prepared to look after the said three children and maintain them was not bona fide. Considering the facts, there is no case made out for interference with the impugned Order in

extraordinary jurisdiction of this Court. Consequently, the application is hereby dismissed.

N. A. BRITTO, J.

RD.